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1952 .

File No. O. Income Tax /52

Legal Department

A **BRANCH**

Subject:—

[REDACTED] under the Indian
Income Tax Act, 1922 .

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Legal Department.

It does not appear from the letter of the Income-tax Officer, Ward 'G', Poona at page 3 ante, that any notice under sub-section (5A) of section 46 of the Indian Income-tax Act, 1932 was issued by him requiring the Chief Engineer Housing, Public Works Department to remit the amount due to the defaulter assessee, Messrs. Paradey Electric Company, to him. The letter cannot also be treated as a notice under this section as no reference is made to the section. Consequently the Ex-Engineer would not be liable to the Income-tax Officer to the extent of the liability of the assessee for tax etc. under that section. It would therefore be necessary to obey the order of the Court of Small Causes, Poona and remit the amount in pursuance of the attachment order of the Court. Before however the amount is remitted the Income-tax Officer, Poona may be so informed by the Chief Engineer.

3d/-

Additional Secretary to Government,

U.R. to L.& H.D.No. 758 , dated the 17th January 1952.

H.D.P.
14/6/56

S.C.

Office of the R. L. A.

It appears that Messrs. Bharat Engineering Company, Sewree, Fort Road, Bombay, held certain contracts for repair of P.O.L. containers. The payment of bills pertaining to the said contracts and refund of the Security deposits lodged for the contracts have been withheld by C.D.A. Southern Command in view of the intimation received from the Commissioner of Income-tax. In his letter dated the 10th October 1951, the Commissioner of Income-tax informed the C.D.A., Southern Command that the amount should not be paid for a month more and that a formal notice to withhold payment would be sent. As the contractors are pressing for the payment, the H.Q., Bombay Area, wishes to know whether when a regular notice under the relevant section of the Income-tax Act has not been issued by the Income-tax authorities, payment can be made to the contractors, and if payment cannot be made, what course of action should be adopted to finalise the case.

Section 45 of the Income Tax Act, 1922, provides that any amount specified as payable in a notice of demand under section 23A(3) or section 29 or an order under section 31 or 33 shall be paid within the time, at the place and to the person mentioned in the notice or order, or if a time is not so mentioned, then on or before the first day of the second month following the date of service of the notice or order and any assessee failing so to pay shall be deemed to be in default etc. Section 63(1) provides that a notice or requisition under the Act may be served on the person therein named by post or as if summons issued by a Court under the Civil Procedure Code. Under section 46(1), when an assessee is in default in making a payment of income-tax, the Income-tax Officer may in his discretion direct that in addition to the amount of the arrears, a sum not exceeding that amount shall be recovered from the assessee by way of penalty. The mode of recovery is laid down in sub-sections (2), (3), (4), (5), and (6) of section 46. Failure to serve a notice in strict accordance with section 63(1) would render subsequent proceedings void (49 I.C.781). In his letter No. J. 9-192/51, dated the 10th October 1951, the Commissioner of Income-tax

states "I am instructing the Income-tax Officer, E Ward, Bombay, to whom the case of the above contractors is now perwarded by Income-tax Officer, B-II, Bombay, to complete the assessments early and also to send to you a formal notice to withhold payment in this case". From the words underlined it appears that the Income-tax Officer has not still assessed the total income of the contractors as required by section 23 and consequently no notice of demand has presumably been issued to the contractors. If so, there being no default, the machinery for recovery of arrears as laid down in section 45 cannot be availed of by the Commissioner of Income-tax as the question of default would arise only after notice of demand is given under section 29 and if the tax is not paid. Besides the Commissioner of Income-tax has not issued a regular notice directing the C.D.A. Southern Command to withhold payment of the amount due to the Contractors. Consequently the payment of the amount to the contractor cannot be withheld.

Sd/-

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Office of the R.L.A.

Bombay State
National
Sports Fund

Indian Income-
tax Act, 1922-
Sec. 15B.

It appears that it is proposed to recommend the Bombay State National Sports Fund to the Central Government for the purposes of section 15-B of the Indian Income-tax Act, 1922. Under that section assesses are allowed exemption from income tax in respect of any sums paid by the as donations to any institution or fund which is established in India for a charitable purpose and is approved by the Central Government for the purposes of that section. An explanation to that section enacts that for the purposes of the section the term 'charitable purpose' includes relief of the poor, education, medical relief and the advancement of any other object of general public utility. Encouragement of mere sport or game such as cricket, football, fencing, yachting, bicycling, lawn-tennis, or any other healthy exercise and recreation primarily calculated to amuse individuals, though such sport may be beneficial to the community, has been held to be not charitable. Attention in this respect is invited to R.L.A.'s opinion No.10556 dated 26th July 1950 given to the Home Department when the proposal for establishing this Fund was under consideration. From the Memorandum of Association of the Fund, however, it appears that the Fund is not established merely for encouragement of sport. Its object is to promote development of physical culture and with that end in view to encourage all forms of athletic sports and games calculated to benefit and improve the health and physical condition of the population. (See in re Hadden, Public Trustee v. More (1932) 1 ch. 133). It would, therefore, be possible to urge that the Fund is an association established for a charitable purpose and there would be no objection to recommending it for approval under section 15B of the Income-Tax Act. A recommendation may be made accordingly.

Sd/-

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recommending it for approval under section 15B of the Income-
Tax Act. A recommendation may be made accordingly.

3d/-

Remembrancer of Legal Affairs.

U. R. to L.S.G. & P.H.D., No. 18734/A, dated the 11th
November 1952.

R.D.P.
14/11/52
S.C.